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Counsel for Elm Creek Real Estate LLC

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**ELM CREEK REAL ESTATE, LLC'S OBJECTION TO
DEBTORS' THIRD SUPPLEMENTAL NOTICE OF CURE COSTS AND
POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS
AND EXPIRED LEASES IN CONNECTION WITH SALE**

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

NOW COMES Elm Creek Real Estate, LLC ("Elm") and files its *Objection to Debtor's Third Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (the "Objection"), in support of which it would respectfully show as follows:

1. On March 7, 2019, Elm received via service of Sears Holdings Corporation, *et al.*'s (the "Debtors") *Third Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (the "Notice of Assignment").

2. The Notice of Assignment served on Elm did not include the list of proposed contracts and leases to be assumed and assigned and the cure cost schedule. After requesting the exhibit and upon review, Elm discovered that those certain Parking Lot License Agreement (the “License Agreement”) and Real Property Lease (the “Lease”) by and between Elm and Sears, Roebuck and Co. (“Sears”) were included on the list of proposed contracts and leases to be assumed and assigned.

3. While Elm does not object to the assumption and assignment of the Lease and License Agreement, the cure cost schedule inaccurately states that no cure amount is due with respect to the Lease. To the contrary, the Debtors’ obligation under the Lease to pay the 2018 *ad valorem* real estate taxes in the amount of \$256,421.07 is now past due. A true and correct copy of the invoice previously sent to Sears is attached hereto as Exhibit 1.

4. Elm attempted to resolve this issue without the need to file a formal objection, but the Debtors have not been responsive to Elm’s multiple correspondence, including with respect to Elm’s request for an extension of the deadline to file a formal objection. As such, the filing of a formal Objection¹ has become necessary, resulting in additional expenses, costs, and attorneys’ fees.

5. The Notice of Assignment fails to include Sears’s obligation to pay the past-due 2018 real property taxes for the Lease. Elm therefore objects to the cure amount included in the cure schedule and requests that the Court require Sears to cure the existing default, including the past-due 2018 real estate taxes and Elm’s costs and expenses incurred and to which it is entitled under the Lease, as part of any assumption and assignment of the Lease.

¹ Elm also notes that it received the Notice of Assignment *without exhibits* on March 7, 2019 and has accordingly had less than four business days’ notice of the proposed assumption and assignment of the Lease and License Agreement and objection deadline.

WHEREFORE, CONSIDERING THE FOREGOING, Elm respectfully requests that the Court require Sears to cure the existing default, including the past-due 2018 real estate taxes and Elm's costs, as part of any assumption and assignment of the Lease, and providing Elm such other relief to which it is entitled.

Dated March 13, 2019.

Respectfully submitted,

/s/ Melissa S. Hayward

Melissa S. Hayward

Texas Bar No. 24044908, *pro hac*
admission pending

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Counsel for Elm Creek Real Estate, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2019, I caused a copy of the foregoing pleading to be served via ECF, electronic mail or first-class mail to all parties on the attached service list.

/s/ Melissa S. Hayward

Melissa S. Hayward

Service List

EMAIL/ECF

I. Bid Notice Parties

- a. Debtors
Rob Riecker: rob.riecker@searshc.com
Luke Valentino: luke.valentino@searshc.com
Mohsin Meghji: mmeghji@miiipartners.com
General Counsel: counsel@searshc.com
- b. Debtors' counsel
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Gavin Westerman, Esq.: Gavin.Westerman@weil.com
- c. Debtors' investment banker:
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II. Buyer Parties

- a. Buyer
Kunal S. Kamalani: kunal@eslinvest.com
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- b. Counsel
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III. Consultation Parties

- a. Bank of America
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George Howard, Esq.: George.Howard@skadden.com
- b. Wells Fargo Bank
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- c. Committee
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IV. US Trustee

(served electronically)
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New York, NY 10014
Paul Schwartzberg
Richard Morrissey

Via First Class Mail

Transform Holdco, LLC
c/o ESL Partners, Inc.
Attention: Kunal S. Kamalani and Harold Talisman
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Bay Harbor Islands, FL 33154

Sears Holdings Corporation
Attn: General Counsel
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Hoffman Estates, IL 60179

Cleary Gottlieb Steen & Hamilton LLP
Attention: Christopher E. Austin,
Benet J. O'Reilly and Sean A. O'Neal
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